

Law
9/26/52

**LAW LIBRARY
ARIZONA ATTORNEY GENERAL**

September 24, 1952
Op. No. 52-264

N.R.

Mr. Robert Morrison
County Attorney
Pima County
Tucson, Arizona

Attention: Mr. Morris K. Udall
Chief Deputy

Dear Sir:

This will acknowledge receipt of your letter of September 13, 1952, requesting an opinion from this office on the following question:

"Rubenstein Construction Company of Phoenix is now completing at Davis-Monthan Air Force Base here a large housing project under terms of the so-called Wherry Housing Act. The land utilized is U. S. owned and is on the military reservation, but a long-term lease has been executed in favor of Rubenstein Construction Company, and the permanent type houses are built and owned by it. The company rents the houses directly to military personnel, collects the rents, and generally operates the subdivision. (I believe that Williams Air Force Base has a similar setup).

Our County Recorder has been contacted by persons whose permanent residence is now in this housing project, and they have demanded the right to register as qualified voters. We would request your opinion as to their qualifications to register if their permanent residence address is in such subdivision, assuming that they meet all the other legal requirements for voters."

52-264

In answer to your question we first invite your attention to the provisions of the Constitution of the United States, the Constitution of Arizona, and the laws of the State of Arizona applicable thereto. Article 7, Section 3, Constitution of Arizona reads as follows:

"(Residence.)-- For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, or while a student at any institution of learning, or while kept at any almshouse or other asylum at public expense, or while confined in any public jail or prison."

The Legislature enacted Section 55-512 ACA 1939, setting the rules for determining residence of voters. So far as material to your question, said rules read as follows:

"Rules determining residence of voters--
Reading rules when challenged.-- The election board, in determining the place of residence of a person, shall be governed by the following rules, so far as applicable:

1. That place is the residence of a person wherein his habitation is fixed, and to which whenever he is absent, he has the intention of returning;
2. A person does not gain or lose his residence by reason of his presence at or absence from a place while employed in the service of the United States or of this state, or while engaged in navigation, or while a student in an institution of learning, or while kept in an almshouse, asylum or prison; * * *

We next invite your attention to Chapter 96, House Bill No. 264, 1951 Session Laws, Twentieth Legislature, First Regular Session, which provides:

"Section 1. The consent of the state of Arizona is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States by purchase, lease, condemnation, or otherwise, of any land in this State required for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, or for any other military installations of the government of the United States.

Sec. 2. Exclusive jurisdiction over any land in this State so acquired for any of the purposes aforesaid, and over any public domain land in this state, now or in the future reserved or used for military purposes, is hereby ceded to the United States; but the jurisdiction so ceded shall continue no longer than the said United States shall own or lease such acquired land, or shall continue to reserve or use such public domain land for military purposes.

Sec. 3. As to any land over which exclusive jurisdiction is herein ceded, the state of Arizona retains concurrent jurisdiction with the United States, so far, that all process, civil or criminal, issuing under the authority of this State or any of the proper officers of the state, upon any person amenable to the same within the limits of such land, in like manner and like effect as if no such cession had taken place.

Sec. 4. All laws and parts of law in conflict with any of the provisions hereof are hereby repealed.

Sec. 5. EMERGENCY. To preserve the public peace, health, and safety it is necessary that this Act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law."
(Emphasis supplied)

Article 1, Section 8, Subsections 17 and 18, Constitution of the United States, provides:

"To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

(18) to make all laws which shall be necessary and proper for carrying into execution of the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof."

The authorities generally hold that where cession of a tract is made by the state to the United States for the purposes mentioned in Article 1, Paragraph 8, Clause 17, Constitution of the United States, and there is no reservation of jurisdiction of the state other than the right to serve civil and criminal process on the ceded lands, persons who reside on such land do not acquire any elective franchise as inhabitants of the ceding state.

McCrary on Elections, 4th Ed. Sec. 89, p. 68;
Paine on Elections, Sec. 63, p. 44;
Kennan on Residence and Domicile, Sec. 493, p. 844;
20 C. J. Elections, Sec. 33, p. 74;
18 Am. Jar. Elections, Sec. 66, p. 224.

The Supreme Court of the United States construed Article 1, Section 8, Clause 17, supra, in the case of Ft. Leavenworth R. Co. v. Lowe, 114 U.S. 525, 29 L. ed. 264, and said:

"By reason of the provisions of Laws 1927, chap. 206 of this state (G.S. 1935, 27-101, 27-102 and 27-102a) (Chap. 96, House Bill 264, 1951 Laws 20th Legislature, First Regular Session our law) whereby this state consents to the acquisition of any lands within this state by the United States for the purposes mentioned in Art. I,

Sec. 8, par. 17 of the Constitution of the United States, and cedes to the United States exclusive jurisdiction over and within any lands so acquired by the United States, except as mentioned in that act, and by reason of the United States having acquired title thereto, persons resident on the real estate in Leavenworth County, Kansas, whereon The National Home for Disabled Volunteer Soldiers was established, have not retained and may not acquire the right to vote at election precincts established on that real estate prior to the above cession."

A similar question as you propound was before the Supreme Court of South Dakota, in the case of McMahon v. Polk, 73 N.W. 77, 47 L.R.A. 830, where the court said:

"A person, though not in the army or navy, cannot, by long and continuous residence within the boundaries of a reservation, the jurisdiction whereof is ceded to the United States (Const. art. 26, § 18) (Ariz. Const. Art. 7, Par. 3), acquire the right to vote at a state election held in the county wherein such reservation is situated."

Other cases following the same reasoning are:

State ex rel. v. Willett, 117 Tenn. 334, 97 S.W. 299;
Ft. Leavenworth R. Co. v. Lowe, 114 U.S. 525, 29 L.ed.264;
Sevier v. Riley, 244 P. 323, 325;
Herken v. Glynn, 101 P. 2d 946; A. Pledge v. Mabry,
197 P. 2d 884, and cases therein cited.

In your situation it is our opinion that persons having a permanent residence on the Davis-Monthan Air Force Base is not sufficient to confer the right to vote as a citizen of Arizona, but if the residents of Davis-Monthan Air Force Base were residents and qualified as electors of the State of Arizona at the time they entered the Air Force Base Subdivision, they are not to be deemed to have lost their residence because of their moving onto the Air Force Base. Under such circumstances they are still residents of Arizona for the purpose of exercising an elective franchise at the place from which they moved. Any person residing on the Davis-Monthan Air Force Base Subdivision who has moved there from other states may cast his ballot at the place of his former residence in person or by absentee voting in states where permissible.

Robert Morrison
Pima County Attorney

Page Six
Sept. 24, 1952

Trusting the foregoing will be of assistance to you, we
are

Respectfully yours,

FRED O. WILSON
Attorney General

MAURICE BARTH
Assistant Attorney General

MB:f